

REMARKS

Applicant requests reconsideration and further examination of Application Number 10/689,478. Specifically, applicant requests consideration of the above amendments and the following remarks in response to December 8, 2009 Office Action.

Applicant's attorney appreciates the courtesies extended by Primary Examiner Patterson and Supervisory Patent Examiner Dye during the March 17, 2010 telephonic interview. Applicant's attorney appreciated the opportunity to discuss the prosecution history of the above-referenced application, the claims of this application, the December 8, 2009 Office Action, the art cited and possible claim amendments.

During the interview, Primary Examiner Patterson expressed a concern regarding the depth of the score line in the external surface of the fourth thermoplastic film layer of the claims of the present application in view of the cited art. In all candor, applicant's attorney does not fully comprehend the reasons for this concern. However, Primary Examiner Patterson also agreed that an amendment to the claims of the present application limiting the depth of this score line would distinguish the claims of the present application over US Patent 3,608,815 (Bunch). Therefore, with this submission each of claims 1, 24, 42, 54 and 68 (i.e., each of the independent claims, and therefore, each of claims 1-81) has been amended to specify the at least one score-line as having a depth that terminates prior to reaching the barrier material of the third film layer thereby not adversely affecting barrier properties of the film. Basis for each amendment is found at Page 17 lines 19-25 of the original application as filed, corresponding to Paragraph 60 of the original application as published. Claims 2-3, 6-8, 12-13, 15, 25-26, 43-44, 47-49, 51, 55-56, 58-59 and 62-64 are original. Claims 4-5, 9-11, 14, 16-23, 27-41, 45-46, 50, 52-53, 57, 60-61, 65-67 and 69-81 have been previously presented. No new matter has been added to the above-referenced application with this submission.

Paragraph 4 of the December 8, 2009 Office Action states that Claims 1-13, 17-23 and 68-81 are rejected under 35 USC §103(a) as allegedly being unpatentable over Bunch (US Patent 3,608,815) (Bunch). Paragraph 5 of the December 8, 2009 Office Action states that Claims 14-16 and 24-67 are rejected under 35 USC §103(a) as allegedly being unpatentable over Bunch in view of Gehrke (US Patent 5783,266) (Gehrke) (with Gehrke apparently being relied upon solely for the disclosure regarding a metallic coating).

However, as discussed during the March 17, 2010 telephonic interview, the prior art cited does not teach the limitations of the claim set, including the limitations of the current claim set. Bunch or Bunch in view of Gehrke does not teach a multilayer packaging film comprising (1) a first thermoplastic film layer comprising a surface-roughened portion on an external surface, (2) a second film layer comprising an adhesive and positioned between the first film layer and the first film layer, (3) a third film layer comprising a barrier material and positioned between the second film layer and the fourth film layer and (4) a fourth film layer comprising at least one score line on an external surface and the score line(s) having a depth that terminates prior to reaching the barrier material of the third film layer so as to not adversely affect the barrier properties of the multilayer packaging film. For reference (and as a reminder), this multilayer packaging film is exemplified but not limited by Figure 4 of the present application.

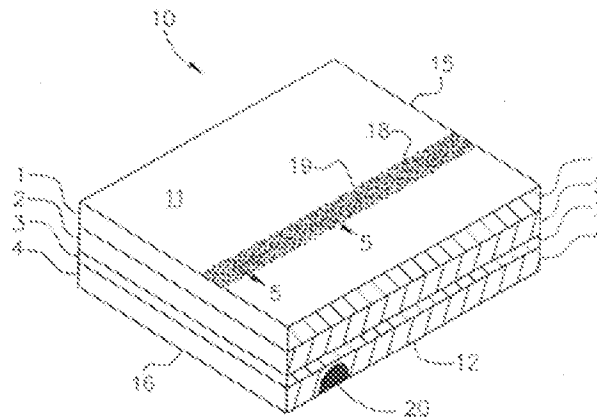


FIG. 4

The limitations of each of (1), (2), (3) and (4) as described above (and as exemplified but not limited by Figure 4) are included in each of claims 1-81 of the present application.

As stated by the Federal Circuit in In re Lowry, "The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art." (32 USPQ2d 1031, 1034 (Fed. Cir. 1994), citing In re Gulak, 217 USPQ 401, 405 (Fed. Cir. 1983).) (See also In re Royka and Martin, 180 USPQ 580, 583 (CCPA 1974) (Obviousness requires suggestion of all limitations in a claim.)) Bunch or Bunch in view of Gehrke does not teach or suggest all the claim limitations of each claim of the present application. As such, claims 1 - 81 are patentable over Bunch

and Bunch in view of Gehrke. Applicant respectfully requests the Examiner withdraw his rejections and allow each of claims 1 - 81.

Additionally, as discussed in the March 17, 2010 telephonic interview, applicant respectfully requests that the Examiner acknowledge the July 21, 2009 Amendment and Request Under 37 CFR § 1.48(c) to Correct Inventorship, particularly the request to add two inventors in light of the May 13, 2009 claim amendments. According to § 201.03 of the Manual of Patent Examining Procedure (MPEP), this particular amendment and request is to be decided by the Primary Examiner (as it does not fall within any of the exceptions listed in § 201.03). Specifically, as explained in § 201.03 of the MPEP,

When any request for correction of inventorship under 37 CFR 1.48(a)-(c) is granted, the examiner will acknowledge any addition or deletion of the names of inventors by using either form paragraph 2.14 or form paragraph 2.14.01 in the next Office communication to applicant or his/her attorney. It will be necessary to revise the PALM records, issue a corrected filing receipt, and change the bib-data sheet. The correction should be noted on the original oath or declaration by writing in ink in the left column "See Paper No. ____ for inventorship corrections." See MPEP § 605.04(g). For Image File Wrapper (IFW) processing, see the IFW Manual. (§201.03, MPEP, Eighth Edition, August 2001, Latest Revision July 2008.)

If an additional telephonic interview would expedite allowance of the claims, the Examiner may contact the applicant via applicant's attorney at (920) 303-7970.

Respectfully submitted,

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